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OGC Has Reviewed

3 May 1956

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MEMORANDUM FOR:

SUBJECT : Questionable Repeal of 31 USCA 215-217

REFERENCES : (a) My Memorandum to You, Same Subject,
Dated 5 April 1956.
(b) Your Return Transmittal Slip to Me,
Same Subject, Dated 17 April 1956.

1. I wrote to you on 5 April 1956 treating the question of whether or not Sections 215-217 of Title 31 of the USC had been repealed by Section 424 of the Federal Tort Claims Act of 1946 (60 Stat. 843, 28 USC 2671 (1952)), as amended. In paragraph 8 of this memorandum I suggested, *inter alia*, that a letter be written to the Comptroller General of the United States, requesting his opinion as to whether or not the repeal in question had been accomplished. In your return transmittal slip of 17 April 1956, you asked that I draft such a request.

2. Since that date, I have been in contact with various offices within the General Accounting Office, among them the Claims Division (Mr. Benjamin, Code 195 x-3487). Mr. Benjamin has advised me that it is the position of the GAO that Section 424 of the Tort Claims Act repealed Section 215 of Title 31 only insofar as this latter Section applied to claims arising within the United States, its territories, or possessions. Put another way, it is the position of GAO that Section 215 of Title 31 still subsists as regards claims in the amount of \$1,000 or less arising in foreign countries and occasioned by the negligence of federal employees acting within the scope of their employment. Illustrative of that position, Mr. Benjamin called my attention to a letter from the Comptroller General to the Secretary of Commerce, dated 22 March 1955 (Unpublished Opinion B-120773), a photostatic copy of which is enclosed. I call your attention to the fifth paragraph of this letter (appearing at the top of the second page). It is clear from so much of this paragraph as begins with the second sentence that the Comptroller General believes Section 215 of Title 31 not to have been repealed "insofar as claims arising in a foreign country are concerned." Although the letter was written in March, 1955, I was advised during the week of 16 April that it represents the current position of the GAO on the subject.

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3. As a technical matter, and purely on the basis of the statutory language involved, I would question the validity of so much of the second sentence of the fifth paragraph of the Comptroller General's letter as precedes the comma following "60 Stat. 846". It would seem to me that there is as much qualification in the repealer language of Section 424(a) as there is in Section 424(b) of the Tort Claims Act. In line with this, you may wish to refer to the underlined portions of the quotation from Section 424(a) which appears in paragraph 4 of my memorandum of 5 April 1956. Such memorandum is returned to you for this purpose.

4. I would think that the Comptroller General's letter and the currently stated position of the representatives of the Comptroller General's office settle the matter as regards what the GAO thinks. However, I remind you that representatives of the Department of Justice and the United States Information Agency both believe Section 215 of Title 31 to have been repealed in toto by the Tort Claims Act. Again, I suggest that, in view of the somewhat limited authority of Section 215 of Title 31, particularly its lack of reference to claims on account of personal injury or loss of life, indicate that specific legislation seeking broader coverage might be desirable.

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Office of General Counsel